

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X

Phil Brodsky

No. 07 CV 10286

Plaintiff

-against-

**Armstrong World Industries, Inc.,
Armstrong Cork Company, Inc.**

Defendants,

-----X

DEFENDANTS' MOTION TO COMPEL

Defendants, Armstrong World Industries, Inc. and Armstrong Cork Company, Inc.(hereinafter "Defendants") by and through its attorneys, Wilbraham, Lawler & Buba, hereby respectfully move for an order compelling Plaintiff to provide Rule 26 Disclosures and to comply with the Court Order of November 27, 2007:

1. This matter was transferred to the United States District Court, Southern District of New York on or about November 13, 2007.
2. On December 17, 2007, Robert Lawler, counsel for defendant spoke with Norman Colon, counsel for plaintiff. Mr. Colon indicated that he would serve discovery materials to defense counsel (See Correspondence, dated January 8, 2008, attached hereto as Exhibit "A").
3. Counsel for Plaintiff has never served discovery materials as required by F.R.C.P. 26 (See Exhibit "A").
4. On January 8, 2008, Counsel for Plaintiff forwarded to Defendant an Order signed by the Honorable Louis L. Stanton, U.S.D.J. scheduling a conference on February 15, 2008. This Order also required all parties to jointly prepare a proposed

scheduling order (See Correspondence, dated January 8, 2008, attached hereto as Exhibit "B").

5. By correspondence dated January 8, 2008, Defendant requested that Plaintiff contact them to schedule a conference to prepare the joint proposed scheduling order (See Exhibit "A").

6. Defendant again requested that Plaintiff contact counsel to schedule the conference to prepare the joint proposed scheduling order and to provide the Rule 26 disclosures (See Correspondence, dated January 28, 2008, attached hereto as Exhibit "C").

7. Defendant renewed this request via correspondence dated February 5, 2008 (See Correspondence dated February 5, 2008, attached hereto as Exhibit "D").

8. To date, Plaintiff has not responded to any of these requests and has not contacted Defense Counsel to arrange a conference to prepare a joint proposed scheduling order as required by the Court's Order of November 27, 2007.

WHEREFORE, Defendants, Armstrong World Industries, Inc. and Armstrong Cork Company, Inc., respectfully request that the Court enter an order compelling Plaintiff to serve disclosures pursuant to F.R.C.P. 26 and to contact defense counsel to prepare the joint proposed scheduling order.

Wilbraham Lawler & Buba

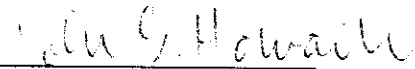
By: _____

John S. Howarth
John S. Howarth, Esquire

CERTIFICATION OF SERVICE

I, John S. Howarth, counsel for the defendants Armstrong World Industries, Inc. and Armstrong Cork Company, Inc. do hereby certify that a true and correct copy of the defendants' Motion to Compel was duly filed electronically with the court by use of the PACER System of the United States District Court for the Southern District of New York and that a true and correct copy of the same was also served upon counsel for the plaintiff by first class mail, postage pre-paid at the address below:

Norman R. Colon, Esquire
209-45 26th Street-Suite 1B
Bay Terrace, NY 11360

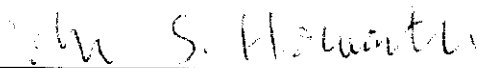


John S. Howarth

Dated: February 7, 2008

VERIFICATION

John S. Howarth, Esquire, states that he is the attorney for Defendants in the above matter; that he is acquainted with the facts set forth in the foregoing Motion to Compel and that the same are true and correct to the best of his knowledge, belief and information; and that this statement is made subject to penalties relating to unsworn falsification to authorities.



John S. Howarth, Esquire
Attorneys for Defendants

Date: February 7, 2008

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X

Phil Brodsky

No. 07 CV 10286

Plaintiff

-against-

**Armstrong World Industries, Inc.,
Armstrong Cork Company, Inc.**

Defendants,

-----X

ORDER

AND NOW, on this ____ day of _____, 2008, upon consideration of Defendants' motion to compel and responses thereto, if any, it is hereby ordered, adjudged and decreed that defendant's motion is granted. Plaintiff is compelled to produce Rule 26 Disclosures with ten (10) days of the date of this order and is further ordered to contact Defense Counsel with five (5) days of the date of this order.

J.

Exhibit
A

☐ **PHILADELPHIA OFFICE**
1818 MARKET ST. SUITE 3100
PHILADELPHIA, PA 19103-3631
TEL: 215.564.4141
FAX: 215.564.4385

☐ **PITTSBURGH OFFICE**
603 STANWIX STREET
TWO GATEWAY CENTER, 17 N.
PITTSBURGH, PA 15222
TEL: 412.255.0500
FAX: 412.255.0505

Direct Dial – 215-972-2856

**WILBRAHAM
LAWLER &
BUBA**

A Professional Corporation
E mail: Estolarski@wlbdeflaw.com
Website: www.wlbdeflaw.com

☐ **NEW JERSEY OFFICE**
24 KINGS HIGHWAY WEST
HADDONFIELD, NJ 08033-2122
TEL: 856.795.4422
FAX: 856.795.4699

☐ **NEW YORK OFFICE**
140 BROADWAY, 46TH FLOOR
NEW YORK, NY 10005
TEL: 212.943.9245
FAX: 212.943.9246

☐ **DELAWARE OFFICE**
901 NORTH MARKET STREET
SUITES 810
WILMINGTON, DE 19801
TEL: 302.421.9935
FAX: 302.421.9955

January 8, 2008

Norman R. Colon, Esquire
209-45 26th Avenue-Suite 1B
Bay Terrace, NY 11360

Re: Brodsky v. Armstrong World Ind. Inc., et al
U.S. District Court No. 07CV10286
Our File No. 41-19

Dear Mr. Colon:

Please be advised that under Rule 26 (f) of the Federal Rules of Civil Procedure, the defendant Armstrong World Industries respectfully request that you contact me in order for us to schedule a mutually convenient date for our conference and for plaintiff to provide the required disclosures under Rule 26.

I will await your call.

Very truly yours,

Wilbraham Lawler & Buba

By: 

Robert B. Lawler

RBL/pal

bcc: Robert Sandkuhler, Esquire

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January 8, 2008

Norman R. Colon, Esquire
209-45 26th Avenue-Suite 1B
Bay Terrace, NY 11360

Re: Brodsky v. Armstrong World Ind. Inc., et al
U.S. District Court No. 07CV10286
Our File No. 41-19

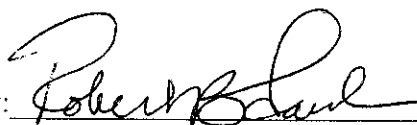
Dear Mr. Colon:

On December 17, 2007 you and I spoke again about trying to “work together” in the above matter. On that date you apologized for having not sent various materials describing the case, despite your earlier promises to do so. You stated that you would forward the materials on Christmas Eve or on Christmas Day. You said you had no real excuse for not having done it earlier but you would be sure to do it this time.

Unfortunately you did not send the materials, and I am still looking for them. You understand that we are not talking about major discovery materials here but simply some material including an expert report which would substantiate that a real case exists. May I ask you to call me and tell me when you can send the materials which you have repeatedly promise to send, but have not done so.

Very truly yours,

Wilbraham Lawler & Buba

By: 
Robert B. Lawler

RBL/pal

bcc: Robert Sandkuhler, Esquire

Exhibit
B

NORMAN R. COLON, ESQ.

209-45 26th Avenue
Bay Terrace, New York 11360

RBL
9B0B

Telephone: (718) 279-6086
Telecopier: (718) 279-6082
E-mail: nrceq@cs.com

January 8, 2008

VIA FIRST CLASS MAIL

BOB LAWLER, ESQ.
1818 MARKET STREET, SUITE 3100
PHILADELPHIA, PA 19103-3631

Re: Brodsky v. Armstrong, et als.
07 Civ. 10286 (LLS)

Dear Sir:

See attached Order pursuant to directions of the Hon.
Justice Stanton.

Thank you.

Yours truly,



Norman R. Colon, Esq.

enc(s)

cc.: Chambers of The Hon. Justice Louis L. Stanton (USDJ)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

 **COPY**

L - - - - -X
PHIL BRODSKY

Plaintiffs,

v.

ORDER FOR CONFERENCE
PURSUANT TO RULE 16(b)

07 Civ. 10286 (LLS)

ARMSTRONG WORLD INDUSTRIES, INC., ET
AL.

Defendants
- - - - -X

This action is scheduled for a conference in accordance with Fed. R. Civ. P. 16(b) on Friday, February 15th, 2008 at 12:30 p.m. in Room 21C. The parties must be prepared to discuss, at the conference, the subjects set forth in subdivisions (b) and (c) of Rule 16.

At least a day before the time of the conference, the parties are jointly to prepare and sign, and at the conference they are to submit to me a proposed Scheduling Order, previously signed by counsel and pro se litigants, containing the following:

- (1) the date of the conference and the appearances for the parties;
- (2) a concise statement of the issues as they then appear;
- (3) a schedule including:
 - (a) the names of persons to be deposed and a schedule of planned depositions;
 - (b) a schedule for the production of documents;

- (c) dates by which (i) each expert's reports* will be supplied to the adversary side, and (ii) each expert's deposition will be completed;
 - (d) time when discovery is to be completed;
 - (e) the date by which plaintiff will supply his pre-trial order materials to defendant;
 - (f) the date by which the parties will submit a pre-trial order in a form conforming with the Court's instructions together with trial briefs and either (1) proposed findings of fact and conclusions of law for a non-jury trial, or (2) proposed voir dire questions and proposed jury instructions, for a jury trial; and
 - (g) a space for the date for a final pre-trial conference pursuant to Fed. R. Civ. P. 16(d), to be filled in by the Court at the conference.
- (4) a statement of any limitations to be placed on discovery, including any protective or confidentiality orders;
 - (5) a statement of those discovery issues, if any, on which counsel, after a good faith effort, were unable to reach an agreement;
 - (6) anticipated fields of expert testimony, if any;
 - (7) anticipated length of trial and whether to court or jury;
 - (8) a statement that the Scheduling Order may be altered or amended only on a showing of good cause not foreseeable at the time of the conference or when justice so requires;
 - (9) names, address, phone numbers and signatures of counsel; and


*The experts' reports are to set forth not merely the expert's qualifications and conclusions, but also the facts on which the expert relies and the process of reasoning by which the expert's conclusions are reached.

- (10) provision for approval of the court and signature line for the court.

If the action is for personal injuries, plaintiff is directed to make a monetary settlement demand and defendant is directed to respond to such demand prior to the conference.

Plaintiff is directed forthwith to notify defendant(s) of the contents of this order, and send a copy of the notification to my chambers.

Dated: November 27, 2007
New York, New York



LOUIS L. STANTON
U. S. D. J.

Exhibit
C

☐ **PHILADELPHIA OFFICE**
1818 MARKET ST. SUITE 3100
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FAX: 412.255.0505

Direct Dial: (215) 972-2893

WILBRAHAM LAWLER & BUBA

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pbradley@wlbdeflaw.com

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140 BROADWAY, 46TH FLOOR
NEW YORK, NY 10005
TEL: 212.943.9245
FAX: 212.943.9246

☐ **DELAWARE OFFICE**
901 MARKET STREET, SUITE 800
WILMINGTON, DE 19801-3090
TEL: 302.421.9938
FAX: 302.421.9955

January 28, 2008

Norman R. Colon, Esq.
209-45 26th Avenue
Bay Terrace, NY 11360

Re: Brodsky v. Armstrong World Ind.
USDC No. 07-CV-10286
Our File No. 41-19

Dear Mr. Colon:

Please allow this correspondence to renew the request to contact our firm to schedule a mutually convenient date for the conference pursuant to the order of the Honorable Louis Stanton dated November 27, 2007. You can contact either myself or Bob Lawler. You had forwarded the order to Bob Lawler with your correspondence of 1/8/08. As you know, the conference is currently scheduled for 2/15/08.

In addition, this renews the request for you to provide the required disclosures under Rule 26. In addition to his verbal requests, this request was made by Bob Lawler in writing to you on January 8, 2008. To date, we have received no response. As such, if no response is received by Wednesday, January 30, 2008, we will file a motion to compel said disclosures.

We also request the discovery materials you promised to Bob Lawler in your December 17, 2007 telephone discussion, including, but not limited to, any expert report and diagnosing medical report, as well as the address of the plaintiff.

Thank you for your anticipated cooperation.

Respectfully,

WILBRAHAM, LAWLER & BUBA

John S. Howarth, Esquire

JSH/jpb

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

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Postage	\$ 92
Certified Fee	265
Return Receipt Fee (Endorsement Required)	215
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$ 572

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Sent To Norman R colon E59
 Street, Apt. No.,
 or PO Box No. 209-45 26th Avenue
 City, State, ZIP+4 Bay Terrace NY 11360

PS Form 3800, January 2001

See Reverse for Instructions

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 4702
DESTINATION TEL # 419999900001917182796082
DESTINATION ID
ST. TIME 01/28 15:00
TIME USE 01'01
PAGES SENT 3
RESULT OK

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☐ DELAWARE OFFICE
901 NORTH MARKET STREET
SUITE 810
WILMINGTON, DE 19808-1251
TEL: 302.421.9922
FAX: 302.421.9955

PLEASE DELIVER PROMPTLY TO:

NAME: Norman R. Colon, Esq.

COMPANY:

FAX NUMBER: 718-279-6082

CLIENT/MATTER NO: 41-19

FROM: John Howarth, Esq.

DATE: 1/28/08

MESSAGE:

Total number of pages including this cover sheet: 3

IF YOU DO NOT RECEIVE ALL OF THE PAGES
PLEASE CALL US AS SOON AS POSSIBLE AT (215) 564-4141

John Howarth

From: John Howarth
Sent: Monday, January 28, 2008 11:31 AM
To: 'nrcesq@cs.com'
Cc: Pat Bradley
Subject: Brodsky v. Armstrong World Ind.

Brodsky v. Armstrong World Ind.
USDC Nom 07CV10286
Our File No. 41-19

Dear Mr. Colon:

Please allow this correspondence to renew the request to contact our firm to schedule a mutually convenient date for the conference pursuant to the order of the Honorable Louis Stanton dated November 27, 2007. You can contact either myself or Bob Lawler. You had forwarded the order to Bob Lawler with your correspondence of 1/8/08. As you know, the conference is currently scheduled for 2/15/08.

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John S. Howarth, Esquire

Wilbraham, Lawler & Buba
1818 Market St., Suite 3100
Philadelphia, PA 19103
215-972-2848

www.wlbdeflaw.com

Sent using BlackBerry

Exhibit
D

*** TX REPORT ***

TRANSMISSION OK

TX/RX NO 4724
DESTINATION TEL # 410004100019917182796082
DESTINATION ID
ST. TIME 02/07 11:35
TIME USE 01'42
PAGES SENT 4
RESULT OK

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FAX: 215.564.4385

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TWO GATEWAY CENTER, 17 N.
PITTSBURGH, PA 15222
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FAX: 412.255.0505

Direct Dial: (215) 972-2832

WILBRAHAM LAWLER & BUBA

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www.wlbdeflaw.com (website)

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FAX: 212.943.9246

☐ **DELAWARE OFFICE**
901 NORTH MARKET STREET
SUITE 810
WILMINGTON, DE 19801
TEL: 302.421.9935
FAX: 302.421.9955

PLEASE DELIVER PROMPTLY TO:

NAME: Norman Colon, Esquire

FAX: (718) 279-6082

FROM: Lindy Grunwald, Legal Assistant

Billing: 99999-00001

RE: Brodsky Subst. of Counsel

DATE: February 7, 2008

Message: Attached are documents for your review from
John Howarth, Esq.

Total number of pages including this cover sheet: 4

**IF YOU DO NOT RECEIVE ALL OF THE PAGES
PLEASE CALL AS SOON AS POSSIBLE AT**

John Howarth

From: John Howarth
Sent: Tuesday, February 05, 2008 4:23 PM
To: nrcesq@cs.com
Subject: Brodsky v. AWI
Attachments: Brodsky Subst. of Counsel.pdf

Brodsky v. Armstrong World Ind.
USDC Nom 07CV10286
Our File No. 41-19

Dear Mr. Colon:

Attached please find the substitution of counsel that was filed today with the SDNY. In addition, below is a copy of the electronic record of the filing issued by the Court.

As a follow up to my email and fax sent to you on 1/28/08, please allow this email to serve as another request for you to contact me to arrange the conference as directed by Judge Stanton in his order of 11/27/07. You forwarded said order to Mr. Lawler of my office with your letter of 1/8/08. I would suggest we meet at my offices located at 140 Broadway, NY, NY at a mutually convenient time. I request you contact me immediately as the conference before Judge Stanton is scheduled for 2/15/08.

Also, I would again request the basic discovery materials you promised to produce to Mr. Lawler during your discussion on 12/17/07 and addressed in his prior correspondence to you. Thank you.

John Howarth

The following transaction was entered by Howarth, John on 2/5/2008 at 4:03 PM EST and filed on 2/5/2008

Case Name: Brodsky v. Armstrong World Industries, Inc. et al
Case Number: 1:07-cv-10286
Filer: Armstrong World Industries, Inc.
Armstrong Cork Company, Inc.
Document Number: 5

Docket Text:

NOTICE of Substitution of Attorney. Old Attorney: Edward J. Stolarski, New Attorney: John S. Howarth, Address: Wilbraham, Lawler & Buba, 1818 Market St., Suite 3100, Philadelphia, PA, USA 19103, 215-972-2848. Document filed by Armstrong World Industries, Inc., Armstrong Cork Company, Inc.. (Howarth, John)

1:07-cv-10286 Notice has been electronically mailed to:

Edward Joseph Stolarski , Jr estolarski@wlbdeflaw.com

1:07-cv-10286 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:

2/5/2008

Document description:Main Document

Original filename:n/a

Electronic document Stamp:

[STAMP dcecfStamp_ID=1008691343 [Date=2/5/2008] [FileNumber=4244521-0]
[320a2ffe1af5f22cc9b08d083b80436db233f3b246fd5d878d81592b9ee24754a33f
1e66105644107a9bdb7688090368644e9fa9f2d6b9f0369545611969c065]]

John S. Howarth, Esquire
Wilbraham, Lawler & Buba
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2/5/2008

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

Phil Brodsky

No. 07 CV 10286

Plaintiff

-against-

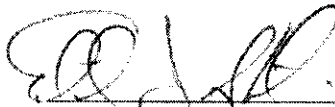
Armstrong World Industries, Inc.,
Armstrong Cork Company, Inc.

Defendants,

-----X

WITHDRAWAL OF APPEARANCE

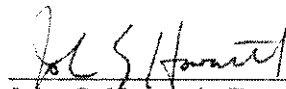
Kindly withdraw my appearance on behalf of Defendants Armstrong World Industries, Inc. and Armstrong Cork Company, Inc. in the above referenced matter.



Edward J. Stolarski, Jr., Esquire

ENTRY OF APPEARANCE

Kindly enter my appearance as counsel on behalf of Defendants Armstrong World Industries and Armstrong Cork Company, Inc. in the above captioned matter.



John S. Howarth, Esquire

DATE: 2/1/08